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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,631	08/22/2003	Theodore Pasquale	1033-T00532	8452
60533	7590	06/12/2007		
TOLER SCHAFFER, LLP 8500 BLUFFSTONE COVE SUITE A201 AUSTIN, TX 78759			EXAMINER FERGUSON, KEITH	
			ART UNIT	PAPER NUMBER
			2618	
			MAIL DATE	DELIVERY MODE
			06/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,631

Applicant(s)

PASQUALE ET AL.

Examiner

Keith T. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 21-24 is/are allowed.
- 6) ☒ Claim(s) 19-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claim 19 is objected to because of the following informalities: Claim 19 is written in functional language. Claim 19 does not have a preamble. Also, claim 19 does not mention a wireless-enable device as recited in previous applicant's embodiments. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the

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invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sorvari et al (US Pub No 2004/0043758).

Regarding claims 19-20, Sorvari et al. teaches a computer-readable medium having computer-readable data operable to initiate presentation of a menu (paragraph [0051]) comprising a plurality of selectable items displayed in respective menu positions (see figure 3), to track at least one selection metric for at least one of the selectable items (figure 2, element 10, 8, 3, 4; paragraph [0053], wherein Sorvari et al. discusses if the key 4 selected, under the control of software 10 being run by controller 8, the appropriate action will be carried out to navigate and display the selectable option), to determine a prioritization level for the at least one selectable item at least partially based on the at least one selection metric (paragraph [0059], [0060]; Sorvari et al. discusses a service recommendation engine are configured to recommend or determined a preferred or desired subset of service according to user-related filter criteria), and to modify an assigned menu position for the at least one selectable item in response to a changed prioritization level for the at least one selectable item (figure 2, element 9, 8; paragraph [0057]-[0058]; Sorvari et al. further discusses a process of updating the bookmarks list, re-dial lists by removed, shifted the menu position in response to changed prioritization level for one selectable item), to store a user preference setting (Figure 9D-E, paragraph [0022]; [0079]); to display a menu option in the assigned appropriate menu location if a metric-based menu display is selected (Figure 3; 9A-9J; paragraph [0053], [0237]-[0261]), and to displaying the available menu option in a preset menu location if a preset display setting is selected (Figure 3; 9A-9J; paragraph [0053], [0076], [0237]-[0261]).

Allowable Subject Matter

2. Claims 1-14 and 21-24 are allowed.

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3. The following is a statement of reasons for the indication of allowable subject matter: Upon close review of the claims, the prior art of record and applicants remarks in the Amendment on page 7 line 3 through page 8 line 14 mailed March 20, 2007, it appears that the allowance of claims 1-14 and 21-24 is appropriate.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith T.

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Ferguson whose telephone number is (571) 272-7865. The examiner can normally be reached on 6:30am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keith Ferguson
Art Unit 2618
June 7, 2007

KEITH FERGUSON
PRIMARY EXAMINER

